

**36. UNIT CLARIFICATION OR MODIFICATION**

**36.1: Clarification of Unit**

“[T]he Union should have requested negotiations with the City to decide whether ... [the] position [in question] was ‘covered’ ... or, if a satisfactory solution could not be reached, ... [the Union] could have filed a Petition for Unit Clarification....” **ULP #17-76**

“Respondent contends that questions of representation cannot be reviewed by this Board in a unit clarification proceeding.... [H]owever, there were no questions of representation raised by the filing of the unit clarification petition itself. The question presented by the petition was what is the appropriate unit under the law, not who is the exclusive representative.” **UC #2-83**

Petition dismissed. See **UCs #9-88, #12-88, #3-89, #4-90, and #8-91.**

**36.111: Clarification of Unit – Procedures – Filing of Petition**

“This Board has every intention of recognizing clarification petitions and does so when clarification is in issue but we recognize only those brought by the bargaining representative as does the National Labor Relations Board.” **DR #2-76**

“A review of the applicable rules shows that the rules allow petitions to be filed by a ‘labor organization or a group of employees.’ (See **24-3.8(10)-S8080(8)(a)**)” **DR #2-76**

“A joint petition for unit clarification and a motion to waive ARM 24.26.630(1)(b) was filed .... Their motion to waive our rule which prohibits the filing of unit clarification petitions during negotiations was granted and a formal hearing ... was held....” **UC #4-80**

“Board of Personnel Appeals rules concerning unit clarification are found at **ARM 24.26.630**. The rules provide that a petition can be filed with the Board only by a bargaining representative of the unit in question or by a public employer and only if: (a) there is no question concerning representation; (b) the parties to the agreement are neither engaged in negotiations nor within 120 days of the expiration of the agreement; (c) a petition for clarification has not been filed with the Board concerning substantially the same unit within the past twelve months immediately preceding the filing of the petition; and (d) no election has been held in substantially the same unit within the past twelve months immediately preceding the filing of the petition.” **UC #3-89.**

**36.112: Clarification of Unit – Procedures – Content**

“The petition wanted this Board to exclude the Chief Deputies. Chief Deputies are already excluded from the unit by virtue of the addendum and the collective bargaining agreement. We therefore have no jurisdiction over the Chief Deputies in this proceeding. We therefore cannot rule them out of the unit because they are already out.” **UC #1-83**

**36.113: Clarification of Unit – Procedures – Need of Showing of Interest**

“ ‘The petition shall be accompanied by proof, consisting of authorization cards, or copies thereof, which have been individually signed and dated within six (6) months prior to the filing of the petition, that the desires for organization represent thirty percent (30%) of the employees that are not presently represented’.” **DR #2-76**

**36.114: Clarification of Unit – Procedures – Review by Board of Personnel Appeals**

“In order to properly discuss a unit clarification it is necessary to consider the events and factors which were involved in determining the appropriateness of this unit.” **UM #2-75**

“The National Labor Relations Board will dismiss a unit clarification petition if it raises an issue that can only be resolved by an election.” **UC #1-81**

**36.115: Clarification of Unit – Procedures – Timeliness**

“To prohibit the filing of a unit clarification petition during the term of an agreement would, in effect, proscribe all such filings.” **UC #2-83**

See also **UD #11-77**.

“Neither the petition nor the counter-petition were filed within the timelines of **24.26.630 ARM**. Since the parties had agreed to a waiver of the timelines to get the unit description clarified it is not now reasonable to hold the parties to a technical reading of the rules as applied to the counter-petition.” **UC #2-87**.

“A contract that is effective from a certain date ‘until’ another date is construed as not including the date named after the word ‘until’ unless there is a specific provision to the contrary, *Hemisphere Steel Products*, 131 NLRB 56, 47 LRRM 1595. (Also see **ARM 24.26.203** and **Rule 6(a) M.R. Civ. Proc.**)” **UC #3-89**.

**36.12: Clarification of Unit – Basis for Clarification**

“There are several reasons for the Board allowing unit modification petitions: (1) when the duties and responsibilities of a position have changed since the

original unit determination, as to create some doubt about the continuing appropriateness of those positions included; (2) if the employees petition that they were originally inappropriately included; (3) changes in political subdivision organization; or (4) changes in union structure.” **UM #2-75**

**36.121: Clarification of Unit – Basis for Clarification – Change in Employee Status**

“[T]he agreement between the parties contains a clear recognition clause and ... the job duties and job relationships have not changed. Therefore, I recommend .. the Board of Personnel Appeals not proceed in this matter because there is no change in the job duties and relationships. Also, the dismissal of the union unit clarification petition would not be disruptive to the established collective bargaining relationship and would foster the policy of Montana’s Collective Bargaining for Public Employees Act.” **UC #1-81**

“[T]he two positions [Street and Sanitation Division Manager and Street and Sanitation Superintendent] were the same in the respects relevant to this matter because the examples of duties statements on their position announcements and the job description were identical save reference to position title.” **UC #5-83**

See also **UM #2-75** and **UCs #8-79, #4-80, #6-82, and #2-84.**

“[T]he landfill position never was excluded or included because it did not exist as a position. It exists as a position now and is appropriately included in the road maintenance unit.” **UC #5-88.**

“[A]t the time these positions were created the County viewed the Detention Secretary position as a new position and negotiated over that position accordingly.” **UC #12-88.**

“On January 20, 1988, Don Gring was promoted from the position of Chief Jailor to a newly created position of Chief Detention Officer. With the change of positions, Mr. Gring assumed additional duties and responsibilities. As Chief Detention Officer, Mr. Gring continued to perform those duties previously performed as Chief Jailor and assumed new duties caused by the implementation of an integrated computer system and assumed duties previously performed by the Undersheriff.” **UC #6-89.**

“Approximately six months prior to the hearing, the class specification of Correctional Officer Supervisor, class code 372015, grade 12 was developed and implemented by request of the W.C.C. [Women’s Correctional Center]. Three employees who were classified as Correctional Officer II, class code 372011, grade 10, were promoted the class of Correctional Officer Supervisor.” **UC #4-90.**

**36.122: Clarification of Unit — Basis for Clarification — Change in Employer**

## **Status**

“This case was brought on by the reorganization of the Administrative structure of the Montana Historical Society. The NLRB has long since recognized that such legitimate changes may require the alteration of an established bargaining unit.” **UC #5-85.**

### **36.123: Clarification of Unit – Basis for Clarification – Other**

“[I]n the event an election is called to determine the appropriate bargaining representative, the categories of substitute teachers and other part-time teachers are not defined with sufficient clarity to determine the eligible voters.” **UM #1-75**

“Unit clarification, ... except in the matter of accretion, is a matter between the bargaining representative and the employer.” **DR #2-76**

“[W]e can entertain any petition which shows that as a direct result of this Board’s actions there is a threat of job security or financial loss. In order to protect the existing bargaining representative, however, such petition must be accompanied by a sworn affidavit setting out the facts which lead to this threat of job security or financial loss. If, upon investigation of this Board the assertion is shown to be truthful and accurate, we will then hold a hearing in order to rectify the situation.” **DR #2-76**

“[T]he major issue ... was whether or not the positions of the Battalion Chiefs, Training Officer, Communications Officer, Maintenance Officer, Fire Marshal, and Fire Captains are properly included in the current bargaining unit for the Billings Fire Department.” **UC #1-77**

“Section **59-1606(1) RCM 1947**, provides that the Board has the duty to investigate a representation petition and if it has ‘reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing.’ .... In this case, the Board had reasonable cause to believe a question of representation existed mainly because of the lack of substantial references to Center teachers in the contract.” **UD #19-75**

“If the Union did not choose to bargain on the proposed change [related to the subject of the recognition clause or the composition of the bargaining unit represented by Firefighters Local No. 448], it was under no obligation to do so. The City’s recourse would appear to be to file a petition for unit clarification under the rules of this Board.... [I]n my opinion, it is not a condition of employment; therefore, I must conclude that our statute does not require bargaining on the subject.” **ULP #19-78**

Petitions for unit clarification were filed claiming that certain positions were supervisory and should be excluded from the units. See **UCs #3-79, #6-80, and #7-80.**

One of the issues was “whether the administrative secretary to the administrative assistant to the Board of Commissioners of Lewis and Clark County is a confidential labor relations employee under **39-31-103(12) MCA.**” **UC#4-79**

“After the representative of the employees changed, the Labor Relations Bureau of the Montana Department of Administration filed a petition for unit clarification of the labor bargaining unit before the Board of Personnel Appeals.” **UC #6-80 Montana Supreme Court (1985)**

A petition was filed “requesting that the bargaining unit represented by Respondent be declared inappropriate because it is comprised of employees who are excluded under Section **39-31-103(2)(b) MCA.**” **UC #2-83**

Was “the unit originally certified by the Board...no longer appropriate under 39-31-202 MCA”? **UC #2-88.**

“This is not the run of the mill unit clarification question concerning accretion or employee status in that this matter centers around two unions contending that their existing contracts apply to the same position.” **UC #12-88.**

“[A] new job description has been developed, but not yet approved, for the Art Aide position.... Until such transformation [of the Art Aide position into a clerical/secretarial position, with a new title] occurs, there appears to be no substantial legal authority to realign the Art Aide position.” **UC #3-91.**

#### **36.21: Modification of Unit – Procedures**

“[A] unit decision of the National Relations Board ‘... may be altered by agreement of the parties, if the process of alteration involves no disruption of the bargaining process or obstruction of commerce and if the Board does not disturb the agreement in a subsequent representation proceeding.’ I can see this Board should follow the above teachings.” **UC #1-81**

#### **36.212: Modification of Unit – Procedures – Content**

“[T]his decision to exclude the petitioners is based on the fact that they were able to present testimony and evidence illustrating differences between their positions and the rest of the unit in every category [managerial, community of interest, history of collective bargaining, desires of employees]. It is not my intent to establish a Board precedent to allow every employee who may feel a

union is not adequately representing his perceived interest to file a unit modification petition.” **UM #2-75**

**36.214: Modification of Unit – Procedures – Review by Board of Personnel Appeals**

“[T]he National Labor Relations Board enumerated the factors to be considered [in the cited cases] and applied them to both unit determination and unit modifications. Based on National Labor Relations Board precedents I feel it is appropriate to apply the community of interest factors to this unit modification case.” **UM #2-75**

See also **UD #22-77**.

“[T]he Court has declared two people confidential under 39-31-103 MCA without Board involvement. Moreover...these positions were removed without applying long established Board of Personnel Appeals and National Labor Relations Board precedent to determine confidential status. See for example **Siemens Corp., 224 NLRB 216, 92 LRRM 1455**, and **UC #6-79, UD #27-79** and **UD #8-83.**” **ULP #54-89**.

**36.215: Modification of Unit – Procedures – Timeliness**

See **UD #11-77**.

**36.221: Modification of Unit – Forms of Modification – Severance of Employee Group**

“The rule also addresses itself to a petition from a labor organization requesting a clarification of the unit from this Board. But I cannot find where our rules provide for a dissident group of employees to use unit modification or clarification in order to remove themselves from a bargaining unit. That was never the intent of our rules.” **DR #2-76**

See also **UD #6-78**.

**36.222: Modification of Unit – Forms of Modification – Merger of Employee Group – Expansion**

“[T]he rule is addressing itself to accretions. That is, the rule is addressing itself to a petition from employees who ... were not included in a certified or employer recognized unit.” **DR #2-76**

“[T]he City must recognize that although many provisions can be negotiated into a master contract, certain items ... must be negotiated with the individual craft representatives and placed in separate addendums to the master contract.” The

Board ordered that the “unit shall consist of ‘all plumbing inspectors and electrical inspectors employed by the city of Great Falls’, and that an election be held to determine the representative desired by those additional employees in the unit included by this modification.” **UD #49-74**

“Clearly the group of employees involved in the March 22, 1977, election and the group of employees involved in the instant petition comprise the same bargaining unit.... That the unit has increased from 9 to 16 employees does not affect this fact.” **UD #11-77**

**36.223: Modification of Unit – Forms of Modification – Unit Consolidation**

See **UD #11-77**.

**36.34: Effects of Clarification or Modification – On Subsequent Representation Rights**

Related to bargaining the water clerk and the water clerk-meter reader out of the bargaining unit: “if one union agrees with the employer not to represent a group of employees, the employees are still free to be represented by all other unions or [to] form their own independent union.... The only thing that has been waived is AFSCME’s opportunity to represent those employees.” **UC #1-81**